Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Calderon	Analyst:	Jahna Carlson	Bill Number:	AB 2656
Related Bills:	See Legislative History	Telephone:	845-5683	Introduced Date: / Amended Dates:	February 24, 2012 / April 11 & May 7, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: California Exporters and Importers Credit/Tax Credit Certificates

SUMMARY

This bill would do the following:

- Under the Revenue and Taxation Code (R&TC), create income and franchise tax credits (for the state's exporters and importers.
- Under the Government Code, modify the functions of the California Transportation Financing Authority.

This analysis only addresses the provisions of this bill that impact the department's programs and operations.

RECOMMENDATION

No position.

Summary of Amendments

The April 11, 2012, amendments removed all of the bill's provisions regarding the additional tax on early distributions from retirement plans and replaced it with the provisions discussed in this analysis.

The May 7, 2012, amendments modified the functions of the authority, recast the income and franchise tax credit as three credits subject to a combined maximum annual credit amount, and added a recapture provision for each credit.

This is the department's first analysis of this bill.

REASON FOR THE BILL

According to the bill's legislative intent language, the reason for this bill is to boost exports and imports through California's ports and airports by providing tax incentives for increasing cargo-moving capacity.

Board Position:			Department Director	Date
______ S	______ NA	X NP		
______ SA	______ O	______ NAR	Selvi Stanislaus	05/11/12
______ N	______ OUA			

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2013, and before January 1, 2018.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. The depreciation deduction is generally allowed over a period approximating the property's economic life rather than deducted in the year purchased or acquired. As an incentive for businesses to invest in property, occasionally an accelerated depreciation deduction is allowed. That is, a deduction is allowed at a faster rate than the decline in the property's economic value would warrant.

Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research tax credits or economic development area hiring tax credits). These tax credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

THIS BILL

Under the R&TC, this bill would create income and franchise tax credits for exporters, as defined, and importers, as defined that are awarded a tax credit certificate, or certificates, by the California Transportation Financing Authority for demonstrating to the authority's satisfaction any, or any combination of, the following:

- Increasing the volume of cargo flowing through the state's ports, airports, or both, during the taxable year, as specified. The credit amount certified by the authority would be calculated as $3.125 per ton of increased cargo flowing through the state's ports and $1,000 for each $10,000 increase in value of cargo flowing the state's airports.
- Increasing the number of qualified full-time employees hired in California during the taxable year, as specified. The credit amount certified by the authority would be calculated as $3,000 per additional qualified full-time employee.
- Capital expenditures to construct a cargo facility in California during a taxable year. The credit amount certified by the authority would be calculated as 2 percent of the total capital costs incurred during the taxable year.

The credits for a taxable year would be limited to the lesser of the amount specified in the tax credit certificate or certificates issued to a taxpayer or an aggregate total of $250,000.

This bill would allow unused credits to be carried forward for up to 10 years.

The credits would be repealed by their own terms on December 1, 2018.

Under the Government Code, this bill would do the following:

- Authorize the authority to award tax credit certificates, as defined, to a person that is an exporter or importer in an amount that would be limited to an aggregate total of $250,000 for a taxable year. An aggregate total of $500 million in tax credit certificates would be authorized to be awarded, as specified, on a pro rata basis over the five calendar years beginning January 1, 2013. Underallocated amounts could be awarded in a future calendar year ending before January 1, 2018.

- Require the authority to do all of the following:

    - Establish a procedure for applicants to apply for tax credit certificates and a process to award tax credit certificates on a first-come-first-served basis.
    - Determine the information an applicant must provide to be awarded a tax credit certificate.
    - Develop and provide tax credit certificate application forms that include the applicant's taxpayer identification number.

- Designate the authority as the entity responsible for determining the amount of the credit and specifically exclude the Franchise Tax Board (FTB) from this responsibility.

- Require the authority to provide to the FTB an electronic copy of each credit certificate awarded within 30 days of a certificate's issue date. The certificate would be required to include the date of issuance, amount of the credit, the type of credit awarded, and the name and taxpayer identification of the exporter or importer awarded the credit.

- Require the authority to establish and implement audit procedures to verify that tax credit certificates were properly awarded consistent with the terms of this bill, cancel tax credit amounts that were erroneously awarded, and notify the FTB of any cancelled amounts.

- Authorize the authority to issue rules, guidelines, or procedures necessary or appropriate to implement this bill. This authority would be exempt from the regulatory requirements of the Administrative Procedures Act

Tax credit certificates would be ineligible for transfer.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

An exporter or importer that met the cargo tonnage and dollar value threshold amounts could avoid the incremental nature of the credit by alternating the flow of their cargo from California's airports to ports every other taxable year. If this is contrary to the author's intent, this bill should be amended.

The language in the R&TC that would limit the aggregate credits to the lesser of the amount of the tax credit certificates or $250,000 duplicates language contained in the Government Code and creates ambiguity as to the entity responsible for administering this limitation. Lack of clarity on the administration of the credit could result in disputes between the authority, the FTB, and taxpayers. If it is the author's intent that the FTB's responsibility would be limited to confirming that reported tax credits "matched" to a tax credit certificate as to taxpayer, tax credit amount, and taxable year, this bill should be amended. In addition, it is unclear whether the recapture language regarding erroneous awards of credits under the Government Code would apply if this limitation is exceeded.

It is unclear how the recapture of erroneously awarded and previously used credits would occur. For example, would the recapture occur in the taxable year that erroneously awarded credits were cancelled and, if so, would interest be charged from the due date for the taxable year in which the credit was originally claimed, or in the taxable year or years that the credit was originally reported via the filing of an amended return?

The bill is silent on the timeframe for the authority to issue a tax credit certificate once an application has been received. Because the credits are contingent on the issuance of a tax credit certificate, a taxpayer would be precluded from claiming a credit prior to the date that a certificate is issued by the authority. In some circumstances, this could result in a certificate being issued subsequent to the original filing date of the return, thus requiring a taxpayer to file an amended return. To facilitate the timely utilization of these credits, the author may wish to consider amending this bill to specify the time frames for the authority to take action on an application.

To insure efficiency and accuracy of data transfer and use, it is suggested that the electronic copy of the tax credit certificates include the names and taxpayer identification number of an exporter's or importer's partners or shareholders, if any, the taxable year the credit certificate applies to, and be provided in a form and manner prescribed by the department.

TECHNICAL CONSIDERATIONS

On page 12, line 10, and page 16, line 32, the phrase "import or export" should be replaced with the phrase "export or import" for internal consistency.

On page 16, line 16, the phrase "imported or exported" should be replaced with the phrase "exported or imported" for internal consistency.

LEGISLATIVE HISTORY

SB 830 (Wright & Bradford, 2011/2012) would have created a trade infrastructure tax credit for taxpayers that invest in, and use, public port facilities in California. SB 830 failed to pass out of the Senate Committee on Governance and Finance.

AB 2687 (Bradford, 2009/2010) would have created a trade infrastructure investment tax credit and an import-export cargo tax credit for taxpayers that invest in, and use, public port facilities in California. AB 2687 failed to pass out of the Assembly Appropriations Committee.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

If this bill is amended to resolve the implementation considerations addressed in this analysis, the bill would not significantly impact the department's costs. It is assumed that the department's activities to administer this bill would be limited to verifying that the taxpayer claiming the credit is in fact the exporter or importer that was awarded a tax credit certificate by the authority, and then allowing or denying the credit as applicable.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2656 For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2012 ($ in Millions)		
2012-13	2013-14	2014-15
-$25	-$85	-$100

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION[1]

Support: Regional Economic Association Leaders of California (R.E.A.L.)
Greater Los Angeles African American Chamber of Commerce (GLAAACC)
Southern California Association of Governments (SCAG) Regional Council
Engineering Contractors' Association
California Fence Contractors' Association
Marin Builders' Association
Flasher/Barricade Association
California Chapter of the American Fence Association
California Contract Cities Association (CCCA)

Opposition: None identified.

ARGUMENTS

Proponents: Some could argue that this bill would stimulate job creation by offering an income tax credit to exporters and importers that expand the cargo capacity flowing through California's ports and airports.

Opponents: Some could argue that with the state's current fiscal crisis, additional tax expenditures should be avoided.

POLICY CONCERNS

Because the bill fails to state otherwise, this bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

LEGISLATIVE STAFF CONTACT

Jahna Carlson	Titus Toyama
Legislative Analyst, FTB	Interim Legislative Director, FTB
(916) 845-5683	(916) 845-6333
jahna.carlson@ftb.ca.gov	titus.toyama@ftb.ca.gov

[1] Support provided by the author's office via fax on April 26, 2012.